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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,947	09/30/2003	Jack A. McClure	25107	7865

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EXAMINER

ELKINS, GARY E

ART UNIT PAPER NUMBER

3727

DATE MAILED: 09/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/676,947

Applicant(s)

MCCLURE, JACK A.

Examiner

Gary E. Elkins

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. The drawings filed on 22 March 2004 are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include any of the reference sign(s) mentioned in the description. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.
2. The drawings are objected to because the lines forming the cuts, score lines and perforation lines are not accurately shown. On page 2, lines 14 and 15 of the specification, it is indicated that cut lines are shown as solid lines, score lines as dashed lines and perforation lines as broken lines. However, the drawings are clearly not showing the lines in this manner. For example, the figures are clearly showing score or fold lines as solid lines. Also, the connection lines between the end flap (34 in the original drawings) and the end panel (26 in the original drawings) are not clearly shown. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an

Art Unit: 3727

amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "lift cutout formed in the second side panel and said second divider panel" as set forth in claim 4 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement

Art Unit: 3727

Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

4. The disclosure is objected to because of the following informalities: (1) The numeral 34 in the specification has been used to describe an “end flap” and a “corner third panel”. (2) Both numerals 26 and 28 have been used to describe the end panel (28 appears to be a corner panel as shown in the original drawings). (3) The numeral 28 has been used in the specification to describe both the end panel and the corner first panel. (4) The numeral 30 has been used to describe both a corner first panel and a corner second panel. (5) The numeral 32 has been used in the specification to describe both a corner second panel and a corner third panel. (6) On page 3, lines 7-9, it is indicated that elements 34 and 32 are connected. Elements 34 and 32 as shown in the original drawings are not connected. The corner panel 32 lies against the side wall. (7) On page 3, lines 10 and 11, it is indicated that the corner panel 32 has notches. As shown in the original drawings, the corner panel 32 does not include notches. Consistent and correct designation of the elements of the invention for each reference numeral in the drawings must be maintained throughout the specification to avoid confusion.

Appropriate correction is required.

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the

Art Unit: 3727

following is required: the specification provides no antecedence for the terms “lift cutout” or “second divider panel” as set forth in claim 4.

Claim Rejections - 35 USC § 112

6. Claim 4 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The disclosure fails to enable one to make and use a lift cutout formed in the second side panel and fails to enable one to make and use a “second divider panel” within the container. No description of divider panel is found in the specification or drawings.

7. Claim 4 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. No written description can be found of the construction set forth in claim 4.

8. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 7, “spaced apart fold” is unclear with respect to what the single fold is spaced apart from.

Art Unit: 3727

In claim 1, lines 9 and 10, it is unclear, within the blank claimed, how the corner second panel is connected to the corner first panel "opposite said end panel". It would appear that the end panel is adjacent all of the corner panels in the blank.

The following each lack antecedent basis in the claims, i.e. each is only inferentially set forth: claim 3, "the corrugated material" (when containerboard or paperboard is claimed), claim 4, "the second side panel" and "the second divider panel", claim 8, "said pair of spaced apart fold lines", claim 9, last line, "the corner second panel", claim 11, "the corrugated material" (when containerboard or paperboard is claimed) and claim 14, "the corner second panel". It is noted that claims 3 and 11 are further defining the corrugated material when claims 2 and 10 from which they depend are not necessarily claiming corrugated material. It would appear that claims 3 and 11 should first positively define that the material is corrugated (as opposed to containerboard or paperboard) and then define the corrugated material more specifically.

In claim 8, "end flap" is a double inclusion of an element, i.e. the end flap is being reintroduced into the claims.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-3, 7-11 and 14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by McGlynn et al.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 5 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGlynn et al in view of either McClure '585 or Dlugopolski. McGlynn et al discloses all structure of the claimed blank and container except a handhold cutout (McGlynn et al shows a handhold formed by a cut flap36). Each of McClure '585 and Dlugopolski teaches that it is known to make a handhold in the end wall of a carton with a cutout. It would have been obvious to make the handhold in McGlynn et al using a cutout, i.e. to eliminate the flap in McGlynn et al as taught by either McClure '585 or Dlugopolski as a mere elimination of a part and its function and to make it easier to insert ones hand into the hole to carry the box. Handhold cutouts are well known in this art.

13. Claims 6 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGlynn et al in view of either Stotz or Watkins. McGlynn et al discloses all structure of the claimed blank and container except a corner lock slot formed in the bottom panel and the side panel. Each of Stotz and Watkins teaches that it is known to provide a lock slot (78, 5, respectively) to prevent movement of a corner panel during use. It would have been obvious to make the blank/container of McGlynn et al with a corner lock slot as taught by either Stotz or Watkins to prevent movement of the corner panel during use.

Conclusion

It is noted that claim 4 has not been rejected over prior art. This should not be construed as an indication of allowable subject matter. The scope of claim 4 could not be determined sufficiently to make a determination as to the patentability of this claim due to the lack of disclosure as set forth in paragraphs 3 and 5-7 above.

The remaining cited prior art is illustrative of the general state of the art.

In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

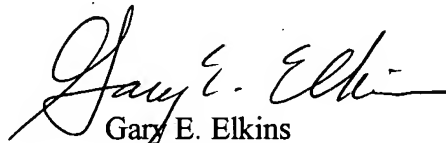
If in receiving this Office Action, it is apparent that certain documents are missing, e.g. copies of references cited, form PTO-892, etc., requests for copies of such papers should be directed to Errica Bembry at (703)306-4005.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist at (703)308-1078.

Art Unit: 3727

Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (703)308-1034. The Examiner can normally be reached Monday through Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Lee Young can be reached at (703)308-2572.


Gary E. Elkins
Primary Examiner
Art Unit 3727

gee
25 September 2004